



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 9, 2013

Representative Paul Holvey
900 Court Street NE H277
Salem OR 97301

Re: House Bill 3174

Dear Representative Holvey:

You asked us to review a memorandum from Kent Anderson regarding House Bill 3174. House Bill 3174 repeals ORS 18.300, which provides that residents of Oregon who file for bankruptcy are not entitled to the federal exemptions provided in 11 U.S.C. 522(d). Thus, if the bill were enacted, Oregonians who file for bankruptcy could choose between the state exemptions or the federal exemptions. We agree with Mr. Anderson's conclusions on all three issues he discusses:

1. Repealing ORS 18.300 would not subject collections of Oregon judgments to federal bankruptcy exemptions.
2. A debtor may claim the exemptions offered under state law or claim the federal exemptions offered under 11 U.S.C. 522(d), but may not claim both.
3. Many of the funds exempt under ORS 18.348 are also exempt under federal law.

1. Repealing ORS 18.300 would not subject collections of Oregon judgments to federal bankruptcy exemptions.

The federal exemptions in 11 U.S.C. 522(d) are part of the Bankruptcy Code and are clearly intended to apply only to bankruptcies. 11 U.S.C. 522(b) provides that "an individual debtor may exempt from property of the estate [certain] property." The term "debtor" is defined for Title 11 to mean a "person or municipality concerning which a case under this title has been commenced." Thus, a person who has not commenced a bankruptcy case is not a "debtor" for purposes of 11 U.S.C. 522(d) and may not claim the exemptions listed in that statute. The federal exemptions in 11 U.S.C. 522 apply only with respect to bankruptcy.

2. A debtor may claim the exemptions offered under state law or claim the exemptions offered under 11 U.S.C. 522(d), but may not claim both.

The case cited by Mr. Anderson, *In re Lawson*, appears to be directly on point. It states:

It is well settled that an individual debtor may exempt from property of the estate either property that is specified under subsection (d) of Code section 522 (as set forth in Code subsection 522(b)(1)); or, in the alternative, any property that is exempt under state or local law, or under federal law other than Code subsection 522(d) (as set forth in Code section

522(b)(2)(A), and an interest as a tenant by the entirety (as set forth in Code subsection 522(b)(2)(B). See, e.g., John T. Mather Memorial Hosp. v. Pearl, 723 F.2d 193 (2nd Cir. 1983); In re Wright, 39 B.R. 623 (D.S.C. 1983); In re Kimball, 2 Bankr. 560, 1 CBC 2d 520 (Bankr.W.D.La. 1980). Simply put, Code sections 522(b)(1) and 522(b)(2) set out mutually exclusive exemption regimens. See, House Report No. 595, 95th Cong., 1st Sess. (1977) 360-361.¹

Thus, a debtor may claim the exemptions offered under state law (ORS chapter 18) or may claim the exemptions offered under federal law listed in 11 U.S.C. 522(d), but may not claim both.

3. Many of the funds exempt under ORS 18.348 are also exempt under federal law.

ORS 18.348 exempts from execution up to \$7,500 in certain funds, including retirement funds, wages, unemployment benefits, public assistance payments and various other types of funds, when the funds are deposited into an account in a financial institution. As Mr. Anderson notes, several of the exempt funds listed in ORS 18.348 are also exempt under federal bankruptcy law.² Thus, a debtor is entitled to many of the exemptions listed in ORS 18.348 under either state or federal law.

I hope this is helpful. Please let me know if you have any questions.

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Very truly yours,

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Legislative Counsel



By
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¹ *In re Lawson*, 45 B.R. 686, 687 (Bankr. D. Vt. 1985).

² Retirement funds, Social Security, public assistance, unemployment, disability and veterans' benefits are all exempt under 11 U.S.C. 522(d). A portion of wages is also exempt under 15 U.S.C. 1673. I have not researched whether some of the more obscure types of funds listed in ORS 18.348, such as benefits paid by a fraternal benefit society (ORS 748.207), are exempt under federal law. If you would like more information on any of the benefits listed in ORS 18.348, I would be happy to research them.